

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 24-CR-369 DHU

ROBERT ABEYTA,

Defendant.

SENTENCE MEMORANDUM

Robert Abeyta, by and through his undersigned counsel, Dennis J. Candelaria, respectfully submits this sentencing memorandum. The parties worked diligently to reach this resolution and crafted a plea agreement with a range between 7-10 years. This range balances the factors that go into sentencing, that accounts for the background of this case and embraces Mr. Abeyta's history and characteristics and the nature of the offense. Mr. Abeyta requests that this Court sentence him to 84 months.

I. Background

On June 28, 2023, officers responded to a shooting. Mr. Abeyta shot John Doe during an altercation outside of Melissa Abeyta's (ex-wife) and John Doe's residence. Mr. Abeyta went to the house to confront John Doe about the allegations that John Doe had raped Mr. Abeyta's daughter. Mr. Abeyta parked his car, approached the house, and knocked on the front door. Melissa Abeyta answered the door and told Mr. Abeyta to go

home. She knew he was drinking and told him to leave. He begins to walk back to his car.

Mr. Abeyta is walking to his car when John Doe comes outside. He walks over to Mr. Abeyta and asks... “[w]hat the fuck you doing here bro?” Mr. Abeyta tells him that he raped his daughter, and he wants to hear John Doe admit it. John Doe denies the allegation. John Doe closes the distance so the two of them are face-to-face. Mr. Abeyta backs up. There is an exchange of words when John Doe grabs Mr. Abeyta’s arm, flips him on his back, takes him to the ground...gunshots followed. Mr. Abeyta shoots John Doe and that is the reason that he is before this Court.¹

II. Argument

A court shall impose a sentence sufficient but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553. “It has been uniformed and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometime magnify, the crime and the punishment to ensue.” *Koons v. United States*, 518 U.S. 81, 113 (1996). The established tradition of sentencing in federal court is that **“the punishment should fit the offender and not merely the crime.”** *Pepper v. United States*, 562 U.S. 476, 487-88 (2011) (Emphasis added). A sentencing court should “engage in a holistic inquiry of Section 3553(a) factors. *United States v. Barnes*, 890 F.

¹ Mr. Abeyta generally agrees with the facts stated in the Presentence Investigation Report. (See Doc. 38) Additionally, he is aware that he could have objected to the offense conduct or the facts as relayed by John Doe in his interview. (See PSR paragraphs 17-18) However, this then becomes “he said, she said.” Even though there is video footage, the video does not capture the beginning through the end of the confrontation.

3d 910, 916 (10th Cir. 2018).

In the present case, less time is necessary to accomplish the purposes of sentencing. *See United States v. Cull*, 446 F. Supp. 2d 961 (E.D. Wis. 2006) (finding a variance appropriate where a defendant “had never been confined before, so this period was sufficient to impress upon him the seriousness of the offense and to deter others under similar circumstances”). Mr. Abeyta has no criminal convictions. He has 3 prior police contacts. (See PSR ¶¶ 46-48) These contacts were in a span of two years and the last contact was in 1996. The most time that he has served in custody was a span of over 2 calendar days but was only a matter of hours. (See PSR ¶ 48). A sentence less than the applicable sentencing guidelines is sufficient to satisfy the purposes and accomplish the statutory goals of deterrence and punishment.

Mr. Abeyta does not have any criminal convictions. This is Mr. Abeyta’s first criminal conviction. Because of the type of crime, his conduct does not fit the strict definition of the Guideline’s policy statement regarding aberrant behavior. However, this conduct was an aberration. Mr. Abeyta has three contacts with law enforcement. His first was in 1995 and his last was in 1996 (ages 22 and 23, respectively). Otherwise, Mr. Abeyta has lived his entire adulthood as a community member living a law-abiding life.

III. Robet Abeyta

Mr. Abeyta requests this Court find a variance outside of the sentencing guideline range and sentence him to 84 months. He is before the Court because he made decisions that were understandable from a dad’s perspective. He regrets these mistakes and accepts responsibility. He knows that there is no justification for acting unlawfully no matter how

noble his intentions. His life is not defined by this crime and to better understand why he committed this crime; it is important that this Court be introduced to Mr. Abeyta and his relationship to his family and daughter and why he responded the way he did.

Soon after Mr. Abeyta was born in Española, New Mexico, to Mike and Jennifer Abeyta the family moved to San Francisco. His dad was a barber, and his mom was a bookkeeper and artist. They were hard working parents who loved their boys. By all accounts, he describes his parents as loving and caring. There was no abuse in the family. They instilled core values: respect your community, respect your family, respect yourself. They took an interest in their education, sports and extracurricular activities.

He shares the best memories of his parents and growing up in San Francisco. About the time he started school (5/6 years old), was the first time that his dad took him to the opening game for the San Francisco Giants. It started a tradition and for approximately 10 years, his dad would get off work, take him out of school, and go to the game for opening day. His favorite player was Willie McCovey. McCovey played 19 years for the Giants and when he retired in 1980, he ranked second only to Babe Ruth in career home runs. Mr. Abeyta laughs when he recalls the first time that McCovey hit a homerun while he was at the stadium because Mr. Abeyta was in the bathroom. It took a few more home games before Mr. Abeyta saw McCovey hit a homerun. He hit 231 homeruns in Candlestick Park. The most in that park by any player.

As he got older, Mr. Abeyta's travels to Candlestick Park were with his friends. They played hooky on opening day. They rode a bus until they were old enough to drive. His eyes still light up when he recalls the players on the field, the fans in the bleachers, and

the cacophony of vendors yelling “popcorn, peanuts, crackerjacks!”

Mr. Abeyta was close to both parents. His mom worked long hours so there were times when she could not get off work. Mr. Abeyta, his brother, and father would take advantage and go hunting. “Just the fellas.” When he was old enough, his dad enrolled him in a gun safety class and bought him a 20-gauge shotgun. Upon passing the gun-safety class, they set off to shoot ducks and doves. It was an all-day event. They would wake up early morning, drive to the rolling hills of Northern California, and sit in an area next to the stream in the hopes of shooting fowl. At times, they could wait for hours and strike out. Only to return home without anything to show for an entire day of hunting. Although his mom didn’t go on hunting trips, she taught Mr. Abeyta other skills. She taught Mr. Abeyta how to cook. She was a teacher of arts and crafts. She taught him how to make ceramics and stain glass. His mom “had decorations for every holiday.”

Eventually, San Francisco became too expensive and after his dad retired he wanted to return to his home in New Mexico. His parents wanted him to graduate high school before they moved back to New Mexico. His parents were getting old, and the wear and tear of the big city was too much for his parents’ health. They returned to their roots...the Okay Owingeh Pueblo. This pueblo was founded around 1200 AD. In 1598, it was conquered by Juan De Oñate and he designated it as the first capital of New Mexico. The name changed to San Juan Pueblo and the annual Pueblo Feast Day is celebrated on the same day as Mr. Abeyta’s birthday...June 24. This day of celebration includes a Catholic mass, an arts and culture market, traditional dance, and food.

When Mr. Abeyta returned to the pueblo, he immediately enrolled at the University of

New Mexico where he studied accounting. He bounced back and forth between Albuquerque and the Pueblo. When he was home, he stayed busy by working or volunteering. He worked odd jobs at the casino or at his favorite restaurant. He volunteered his time to help in the celebration of the Feast Day. He helped his uncle with Bingo at the Pueblo. One of his favorite jobs was volunteering as an environmental restorationist. He volunteered to rebuild the habitat for the Southwestern Willow Fly Catcher. A specie of bird that was on the government's list of endangered species. He loved his community so much that he never returned to Albuquerque to finish his education. Instead, he became more involved in his culture. He served as a "fiscale". A position within the reservation where he is appointed by elders. On its face, it is a grave digger. However, the position acts as an intermediary between the Pueblo and the Catholic Church. When he grew older, he worked as a forestry sawyer. He settled down into his community and will return to better serve his people upon completion of his prison sentence. His brother described Mr. Abeyta as being a polite, dependable, well-rounded person, and an outstanding citizen.

Eventually, he started working at the casino where he met Melissa. Melissa was a single mom. She was raising her two-year-old daughter Amelia. Melissa and Robert had their first date on October 30, 2008. Two years later they were married and by 2010 Robert adopted Amelia as his own. Mr. Abeyta is the only dad Amelia has known. From 2008 to 2023, Mr. Abeyta tried to always have daily contact with his daughter. Even through and beyond his divorce.

Married life wasn't always "peaches and cream." This couple struggled with paying

the bills. However, both parents were determined to give the best they could for their children. For their birthdays, the kids always celebrated with a theme. Amelia celebrated with a princess cake or a Dora the Explora piñata. Mr. Abeyta couldn't wrap his head around why he would buy a piñata that was supposed to be something his daughter Amelia adored only for her to beat it with a stick.

As the kids got older, their interest shifted. Mr. Abeyta's parenting skills pivoted. He was now taking his three kids camping and fishing. They would spend the weekends near a lake. The family huddled around the fire and told ghost stories while making smores. Amelia was 5 years older than Chloe. She would lose interest in family activities and her interest became school and boys. Like any father, Mr. Abeyta was always suspicious of young boys' intentions and no boy was good enough for his little girl. Homecomings and proms were always a little awkward for Mr. Abeyta. However, he knew this was a rite of passage for most teenaged girls.

Even though Mr. Abeyta's relationship with his kids was strong, he could not say the same about his marriage. He knew he was having problems with his marriage. Eventually, Melissa sat Mr. Abeyta down and told him that he does "not make her happy". He sadly remembers the day that he was served divorce papers. His heart was broken. He felt betrayed but he knew that he was partly responsible. Losing his family took an emotional toll. He sees that he could have benefitted from parenting classes to better handled his divorce.

After the divorce, Mr. Abeyta tried to be part of his children's lives the best he could. He tried to support them and take an active role in their education. He described it as

difficult because he was not part of the family-unit living under one roof. Melissa started a new relationship with the victim. There were whispers that the victim raped Amelia. The whispers grew louder until there was an open law enforcement investigation. In an effort to protect Amelia, law enforcement and the family court kept Mr. Abeyta in the dark. They told him that they didn't want him speaking to Amelia for fear that it could corrupt any law enforcement investigation or could damage her emotionally. Mr. Abeyta honored the request, but it festered in him like cancer. Not knowing what happened was worse than knowing.

“Perhaps the most violent crime of all is the violent rape of a child. A woman who is raped has a pretty good idea of why it happened. But a child? A ten-year old child? Suppose you're a parent. Imagine yourself trying to explain to your child why she was raped.”²By court order, Mr. Abeyta could not speak to his daughter about the allegations. If true, he could not console her, he could not hug her, he could explain to her why she was raped. For two years, he felt as he was less than a dad. He was not there to protect her. Mr. Abeyta entrusted the tribal and family courts. Unfortunately, he felt he was never adequately kept in the loop over the allegations. He felt betrayed by the courts.

Approximately two weeks before this incident, Mr. Abeyta was stopped by John Doe as they were traveling in different directions on the reservation. There was a verbal spat. John Doe believed that Mr. Abeyta was spreading rumors. John Doe believed that Mr. Abeyta was going around the reservation calling him a rapist. This confrontation

² John Grisham. “A Time to Kill”

consumed Mr. Abeyta. It sparked a flame. On June 28, 2023, Mr. Abeyta was drinking at a friend's house. He went home and continued drinking at his brother's house. Mr. Abeyta went to John Does's house to confront him...there was thirst for primal justice.

Mr. Abeyta knows what he did was wrong. In hindsight, he cannot believe he committed this crime and would never do it again. Since his arrest, Mr. Abeyta was placed at the La Posada Halfway House. He found a job as a meat cutter. He would like to continue to fine tune this trade and make it a career. To that end, he requests this Court to recommend a placement at the Bureau of Prisons that will help facilitate his career choice. Mr. Abeyta's family and friends will continue to support him. His life pattern provides the most hope for his future and in no small way, most strongly indicates the appropriateness of a sentence of 84 months. These are the factors that justify a variance in this case and compel the finding that a sentence is reasonable not greater than necessary to reflect the goals of all the statutory requirements under § 3553 factors.

Wherefore, Mr. Abeyta respectfully requests that this Court find that a variance is justified, a sentence at the bottom of the agreed upon range and sentence Mr. Abeyta to 84 months.

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